IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

CRL.A.No. 1573 of 2003()

CC.203/2000 of JUDL. MAGI. OF FIRST CLASS-I, THODUPUZHA

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APPELLANT: COMPLAINANT

PHILIP JAMES, S/O. CHACKO,
KALLANICKAL HOUSE, KODIKULAM VILLAGE,
THODUPUZHA TALUK, KODUVELIKKARA P.O.,
THODUPUZHA.

BY ADV. SRI.BAIJU JOHN
SRI.JOHN VARGHESE(THOPPIL)

RESPONDENTS: ACCUSED/STATE

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1. T.M.ALEYAS, S/O. MATHAI,
THOLANIKKUNNEL HOUSE, PAINGHOOTOOR P.O.,
KADAVOOR VILLAGE, KOTHAMANGALAM TALUK.

2. STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.PEEYUS A.KOTTAM
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.1573 of 2003

Dated this the 22nd day of October, 2007

JUDGMENT

The appellant is the complainant in C.C.No.203/00 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. It is the case of the complainant/appellant that he had certain monetary transactions with one Binoy (PW2) who is a friend of him. While so the accused had issued the impugned cheque dated 25.5.2000 for amounts due to Binoy. The above cheque was handed over to the complainant by Binoy after receiving consideration. Thereafter when the complainant presented the cheque for encashment the same got dishonoured for the reason 'account closed'. The lawyer notice he issued demanding payment was replied to raising false contentions. The allegation is that the accused was made to execute cheques (10 signed cheque leaves) forcibly by one Shibu on 11.3.1999 and with respect to the same he had filed a complaint before the Pothanikadu police and that the impugned cheque is one of the above cheque leaves. He has denied any transaction with Binoy

or Shibu.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P6, DW1 and Ext. D1.

4. The court below acquitted the accused only on the ground that the cheque was returned as 'account closed'. The court below has relied on the decision of this court in **Joseph vs. Philip Joseph (2000(2)KLJ 679)**. As pointed out by the counsel for the appellant the above decision stands overruled vide the decision of the Division Bench of this court in **Vathsan vs. Japahari (2004(1) ILR Kerala 548)** relying on the decisions of the Supreme Court. Hence, the view of the court based on the overruled decision is not longer sustainable.

5. PW1, the complainant as well as PW2 Binoy have testified. PW2 Binoy has deposed as to the execution of the cheque. He has denied the contentions that the impugned cheque is one of the cheques allegedly got executed by force at the instance of one Shibu. PW1, the complainant has explained his status as holder in due course of Ext. P1 cheque. The statutory formalities have been complied with vide Ext. P4 notice and Ext. P5 acknowledgment card. DW1, the Manager of the

bank has deposed as to the dishonour of the cheque as the account was closed. In the light of the evidence of PWs' 1 and 2 and the documents produced at the instance of the complainant it stands established that the cheque was duly executed by the accused. No evidence was adduced to rebut the statutory presumptions. Hence, the finding of the court below acquitting the accused is set aside.

6. The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.2,00,000/- to the complainant and in default, to undergo simple imprisonment for three months. The appellant is granted six months' time to remit the amount of compensation. He shall appear before the Judicial First Class Magistrate Court on 22.4.2007 to receive the sentence.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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